

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:

Eugene S. SMOTKIN

Application No.: 09/891,200

Filed: June 26, 2001

For: ELECTROLYTE COMPONENTS FOR USE
IN FUEL CELLS (AS AMENDED)

Confirmation No.: 9382

Art Unit: 1745

Examiner: Raymond Alejandro

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

MS Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This response is to a Notice of Non-Compliant Appeal Brief mailed 21 November 2007. The Notice indicates that the ground for finding non-compliance is asserted failure to provide a concise explanation of the subject matter defined in each of the independent claims as required by 37 C.F.R. § 41.37(c)(1)(v).

As permitted, and indeed suggested by MPEP 1205.03, a paper providing a summary of the claimed subject matter will suffice; an entire new brief need not and should not be filed. Accordingly, a substitute summary is attached hereto.

Applicant believes that the assertion of non-compliance is in error and a petition to that effect is also being filed along with this response.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket No. 491712000100.

Respectfully submitted,

Dated: December 21, 2007

By: _____ / Kate H. Murashige /
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SUBSTITUTE SUMMARY OF CLAIMED SUBJECT MATTER

MS Appeal Brief – Patents
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P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Claims 75 and 84 are independent, and have alternative formulations to describe a single limitation, but claim similar subject matter.

Independent claims 75 and 84, are directed to electron-insulating proton-conducting (EIPC) membranes designed to serve as electrolytes in fuel cells where

- (1) a single metal or metal hydride support is
- (2) coated on one or both faces by

(3) an inorganic EIPC coating lacking a liquid phase

(4) that operates at the temperature range (220-550°C) and

(5) at the appropriate proton area-specific resistance (ASR), *i.e.*, 0.01-100 $\Omega\cdot\text{cm}^2$, in claim 75 and in the range of Nafion[®] as shown in Figure 10 reproduced in claim 84.

As to limitations (1) and (2), both claims 75 and 84 require a single proton-conducting support as set forth on page 23 of the specification beginning at line 7 to page 24, line 9. Metals become hydrides when the cells are in operation (see page 23, lines 14-16). Support for coating on one or both faces is on page 25, lines 11-19 and page 26, lines 13 to page 27, line 4.

As to limitation (3), the requirement in both claims 75 and 84 that the EIPC be inorganic is supported on page 28, lines 11-12; additional alternatives are described, but only inorganic EIPC's are claimed. Support for lacking a liquid phase is found, for example, page 11, lines 9-13, as well as lines 18-19 on page 22 at lines 10-12, and page 21, lines 15-16.

As to limitation (4), this is supported, for example, on page 17, line 19-page 18, line 7, the specific temperature range of operability of 220°C-550°C is required. Both claims 75 and 84 require this temperature range.

As to limitation (5), both claims require a value for ASR that is practical for fuel cell operation. Claim 75 requires the area-specific resistance for protons in the range of 0.01 - 100 $\Omega\cdot\text{cm}^2$ set forth on page 17, lines 3-4. Claim 84 specifies this area-specific resistance as referred to Figure 10. Figure 10 appears as such in claim 84.

This substitute summary is filed in response to a Notice of Non-Compliant Brief mailed 21 November 2007.

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